Tetrapack India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-2004

Reported in : (2004)(175)ELT647Tri(Mum.)bai

Judge : M T K.D.

Appellant : Tetrapack India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1.1 The appellants are engaged in the manufacture of laminated paper falling under Chapter 76 of the CTA and avail modvat credit on the duty paid on the inputs used in the manufacture of final products.

The appellants had availed modvat credit on the basis of invoices issued by M/s. Garware Polyester P. Ltd., West Coast Paper Mills through their consignment agents namely 1.2 The invoices contained the names of the consignment agents as the goods were purchased through the agents. However, the appellants name as "Account Hindustan Packaging Company Ltd. Paper Laminated Plant" was subsequently incorporated.

2. The claim for modvat was rejected on the ground that, the credit has been taken on the invoices which are not in the name of the appellant, but were in the name of some other dealer whose name was appearing in the computer generated invoice of the manufacturer, which were subsequently corrected to incorporate the name

of the appellants.

Therefore it was alleged that, the names were subsequently incorporated after the generation and issue of the invoice. It was alleged that for all practical purposes, the invoice are in the name of Mazda agencies.

3. The respondents refuted the allegation. The Asst. Commissioner denied the credit and the appellate authority merely followed the logic of the Order in Original.

5. On going through the disputed invoices it is apparent that, the invoices were computer generated by the manufacturer, and the name of Mazda and Premier did appear initially thereon. However, subsequently, the manufacturer himself has corrected the invoices and incorporated the name of the appellants. This correction gets conclusively established through the fact that the lorry receipts corresponding to the said invoice show that the inputs have actually been transported from the manufacturer's factory to the factory of the appellants.

Correspondingly, the lorry receipts, corroborate this position.

Therefore, this is a case of mere correction of particulars of the consignee in the invoice, as against the case of obtaining credit on the basis of endorsed invoice, as made out by the revenue.

6. The concept of endorsed invoice visualises that, the goods have to go from the manufacturer to an intermediate person, such as a dealer who in turn has to endorse the document and the goods in favour of the user. In this case, the manufacturer himself has corrected the name of the consignee. So this is not a case of endorsed invoice and accordingly, the lower authorities were in error in denying the credit as has been done through the impugned orders.

7. Consequently, the impugned orders passed by the lower authorities are set aside and the appeal is allowed with consequential relief, if any, in accordance with law.